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No. 83-1965

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RELIANCE MORTGAGE CORPORATION,
A COLORADO CORPORATION,

Petitioner,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AN ILLINOIS CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT COURT OF APPEALS

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Respectfully submitted,

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TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Argument	1
Conclusion	4

TABLE OF AUTHORITIES

Cases	PAGE
Mattis v. *Schnarr*, 502 F.2d 588 (8th Cir. 1974) . .	2
Powell v. *McCormack*, 395 U.S. 486 (1969)	2
Skelly Oil Co. v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950)	4
United States v. *Fisher-Otis Co., Inc.*, 496 F.2d 1146 (10th Cir. 1974)	2
Statutes	
28 U.S.C. §2201	1,3,4
28 U.S.C. §1332	4
Rules	
REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES, RULE 17	1

ARGUMENT

The Respondent, Continental Illinois National Bank and Trust Company of Chicago ("Continental"), presents essentially three points in its Brief in Opposition to the Petition for Writ of Certiorari filed by the Petitioner, Reliance Mortgage Corporation ("Reliance").

The first argument of Continental is that no special or important reason exists for this Court to review Reliance's Petition. As noted in Rule 17 of the Revised Rules of the Supreme Court of the United States, one of the reasons for this Court to review a Writ of Certiorari is:

> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; . . . .

As noted by both Reliance and Continental, the Seventh Circuit Court of Appeals dismissed Reliance's prayer for relief under 28 U.S.C., § 2201 seeking a declaratory judgment by summarily stating:

> Finally, count eight fails because Reliance failed to state any proper claims for relief regarding the certificate of deposit; *a declaratory judgment is an alternative form of relief, not an independent cause of action.* (Emphasis added.)

Continental blithely asserts that there is no conflict among the various federal courts of appeals concerning the issue presented by Reliance as to whether 28 U.S.C., § 2201 authorizes an independent cause of action. Continental does not attempt to distinguish the numerous cases presented by Reliance in support of its position that there is such a conflict. Continental makes no reference to the following cases cited by Reliance which come from different circuits and which cannot be interpreted as anything other than a statement that 28 U.S.C., § 2201 does set forth an independent cause of action.

In *Mattis* v. *Schnarr*, 502 F.2d 588 (8th Cir. 1974) it was stated at 591:

> The Plaintiff's right to declaratory relief is not dependent upon a showing that he is entitled to injunctive or monetary relief.
>
> . . . Where there is . . . a concrete case admitting of an immediate and definite determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages . . . [Citations omitted] *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 241, 57 S.Ct. 461, 464, 81 L.Ed. 617 (1937).

In *United States* v. *Fisher-Otis Co., Inc.*, 496 F.2d 1146 (10th Cir. 1974), it was held at 1149:

> A request for relief may be so limited [to a declaration of rights] under the Declaratory Judgment Act, and any further necessary and proper relief based upon the declaratory judgment and any additional facts which might be necessary to support such relief can be sought at a later time. (Citations omitted)

Indeed, this Court itself has affirmed that there is no necessity for a party to seek other relief, which necessarily means that a prayer for declaratory judgment is an independent cause of action. In *Powell* v. *McCormack*, 395 U.S. 486 (1969) this Court stated at 517-518:

> The availability of declaratory relief depends on whether there is a live dispute between the parties . . . and a request for declaratory relief may be declared independently of whether other forms of relief are appropriate. (Citations omitted)

There is an obvious conflict between the decisions referred to above and the Seventh Circuit's determination

that, "a declaratory judgment is an alternative form of relief, not an independent cause of action."

Continental also asserts that the Seventh Circuit Court of Appeals was correct in dismissing the Amended Complaint of Reliance due to that pleading containing no allegations of underlying facts so as to support a declaratory judgment. To the contrary, as presented in Reliance's initial Petition, the Amended Complaint alleges that Continental has unilaterally appropriated a Certificate of Deposit and accrued interest thereon which exceeds One Million Dollars while ignoring the claims of Reliance that such Certificate of Deposit is not the property of Continental and cannot be confiscated. To state that no underlying facts exist to support a "live dispute" ignores the allegations of the Amended Complaint.

Furthermore, Continental can only be speculating as to whether this was in fact the finding of the Seventh Circuit Court of Appeals. As noted above, the entirety of the decision dealing with Reliance's prayer seeking a declaratory judgment makes no reference to any underlying facts or allegations pled by Reliance in its Amended Complaint. Rather, a review of that decision shows that the Seventh Circuit Court of Appeals dismissed other claims presented by Reliance with regard to the Certificate of Deposit and then stated that the claim for declaratory relief could not stand on its own basis because of the dismissal of the other claims. To read anything further into the opinion of the Seventh Circuit Court of Appeals is improper and misleading.

Continental also states that 28 U.S.C. § 2201 merely created a new remedy for parties. Continental apparently misunderstands the concept of a remedy while ignoring the actual language of that statute. Continental makes no attempt to explain to this Court how the following language of 28 U.S.C. § 2201 does not authorize an independent cause of action seeking declaratory relief. That language is as follows:

> . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested parties seeking such declaration, *whether or not further relief is or could be sought* . . . (Emphasis added)

Finally, Continental argues that the Declaratory Judgment Act is procedural only and cites case law in support of that proposition. Reliance does not disagree with that statement of the law but notes that it is to be taken in the context of 28 U.S.C. § 2201 not enlarging federal jurisdiction. *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950). In this instance, as noted at pages 8 and 12 of Reliance's initial Petition, independent jurisdiction existed in the United States District Court for the Northern District of Illinois, Eastern Division. Such jurisdiction existed by virtue of 28 U.S.C. § 1332 inasmuch as Reliance and Continental are citizens of different states and the amount in controversy exceeds $10,000.00.

CONCLUSION

The Opposition Brief of Continental does not rebut, distinguish or in many cases even address the various reasons provided by Reliance for this Court to issue a Writ of Certiorari to the Seventh Circuit Court of Appeals. Reliance respectfully asserts that such a Writ of Certiorari is both procedurally proper and substantively required inasmuch as a conflict exists between the Seventh Circuit Court of Appeals and other circuit courts as to whether 28 U.S.C. § 2201 allows an independent cause of action. Reliance also

seeks to have the Writ of Certiorari be granted as to all other aspects of its original Petition.

Respectfully submitted,

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